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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,309	10/06/2004	Yumin Wei	NL 020289	4626

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EXAMINER

LEWIS, JONATHAN V

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/510,309

Applicant(s)

WEI, YUMIN

Examiner

Jonathan Lewis

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The USPTO "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility" (Official Gazette notice of 22 November 2005), Annex IV, reads as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994) (claim to data structure stored on a computer readable medium that increases computer efficiency held statutory) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Claims 10-11 are rejected under 35 U. S. C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim ¹⁰~~24~~ defines a signal-processing program embodying functional descriptive material. However, the claim does not define a computer readable medium or memory and is thus non-statutory for that reason (i.e., "When functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the

medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized" - Guidelines Annex IV).

That is, the scope of the presently claimed signal-processing program can range from paper on which the program is written, to a program simply contemplated and memorized by a person.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Gordon et al. (US PG Pub. No. 2001/0056577).

Regarding claim 1, Gordon et al. teaches a method of downloading a program into a broadcast receiver, wherein a tuner/decoder of the broadcast receiver is operative to selectively tune into at least one of a plurality of broadcast digital transport streams and to selectively extract at least one service from the transport stream, where each service includes at least one selectively receivable service component from a plurality of service component types (page 3, 0043 discloses the extraction and tuning to the transport stream selected containing audio and video components); at least one service component type representing programs (hereinafter "Xlets") that are executable by the broadcast receiver (page 4, 0043 discloses this claim limitation concerning the video portion); the method including: presenting to a user a guide with Xlets available for

receipt (Abstract discloses the program guide with a plurality of video objects, the Xlets); enabling a user to select at least one of the presented Xlets (Fig. 3, 310 shows the user's selection); and in response to a user selection, causing the tuner/decoder to tune into the transport stream that carries the selected Xlet, and to extract the selected Xlet (Fig. 3, shows the tuning with steps 322/326, and it shows the extraction with step 328, the demux).

Regarding claim 2, Gordon et al. teaches a method as claimed in claim 1, wherein the method includes: retrieving information on Xlets being broadcast via the plurality transport streams (page 13, 0124 discloses the plurality of transport streams sent to the receiver with information regarding Xlets); and compiling the Xlet guide based on the retrieved information (Abstract discloses the compilation of Xlet guide based on this information).

Regarding claim 3, Gordon et al. teaches a method as claimed in claim 2, wherein the step of retrieving the information includes causing a tuner/decoder of the broadcast receiver to scan a plurality of transport streams being broadcast in the system and to extract from information in the transport stream which Xlets are being broadcast via a service of a transport stream (page 16, 0155 discloses this claim limitation, where the scanning is the down arrow activation and the PID is the information extracted from the transport stream being broadcast).

Regarding claim 4, Gordon et al. teaches a method as claimed in claim 2, wherein the step of retrieving the information includes causing a tuner/decoder of the broadcast receiver to extract the information for Xlets available via the plurality of

transport streams from one predetermined transport stream (page 4, 0043 discloses the decoder extracting the information for the Xlets from the plurality of transport streams).

Regarding claim 5, Gordon et al. teaches a method as claimed in claim 1, including receiving a predetermined Xlet-Guide Xlet that is operative to cause the broadcast receiver to present the Xlet guide to the user (page 2, 0033 discloses this claim limitation).

Regarding claim 6, Gordon et al. teaches a method as claimed in claim 5, wherein the Xlet-Guide Xlet is operative to cause the broadcast receiver to retrieve information on Xlets being broadcast via the plurality of transport streams (page 3, 0040 discloses the program guide Xlet causing the retrieval of associated audio and video information).

Regarding claim 7, Gordon et al. teaches a method as claimed in claim 5, including the step of automatically downloading the Xlet-Guide Xlet in response to an instruction of a user (page 1, 0009 teaches existing Xlet-Guide downloaded automatically in response to the user instruction of turning the receiver on).

Regarding claim 8, Gordon et al. teaches a method as claimed in claim 1, including the step of retrieving a user interest profile and presenting the Xlet guide according to a user interest profile (page 4, 0044 discloses the profile retrieval and presentation of the guide in accordance with it).

Regarding claim 9, Gordon et al. teaches a method as claimed in claim 1, including the step of regularly checking whether a new Xlet has become available (page 3, 0038 discloses the user checking, with a regularity as determined by him/her, for new

Xlet), and wherein the step of presenting the Xlet guide includes highlighting Xlets that have newly become available (page 1-2, 0013 discloses the ability to highlight or emphasize an object by the STT as disclosed in page 3, 0038).

Computer readable medium and apparatus claims 10-13 are rejected for the same reasons as discussed in the corresponding method claims above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Metz et al. US Pat. No. 5,666,293
- b. Metz et al. US Pat. No. 5,768,539
- c. Goode et al. US Pat. No. 6,166,730

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Lewis whose telephone number is (571) 270-3233. The examiner can normally be reached on Mon - Fri 7:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on (571) 272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


BRIAN TYRONE PENDLETON
SUPERVISORY PATENT EXAMINER